4-5-2016

State v. Burns Appellant's Brief Dckt. 43114

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 43114**
Plaintiff-Respondent,	)	
	)	**ADA COUNTY NO. CR 2014-4787**
v.	)	
	)	
JOSHUA ROBERT BURNS,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
_____	)	

_____

BRIEF OF APPELLANT

_____

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

_____

HONORABLE LYNN G NORTON
District Judge

_____

SARA B. THOMAS
State Appellate Public Defender
State of Idaho
I.S.B. #5867

SALLY J. COOLEY
Deputy State Appellate Public Defender
I.S.B. #7353
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

ATTORNEYS FOR DEFENDANT-APPELLANT

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEY FOR PLAINTIFF-RESPONDENT

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STATEMENT OF THE CASE

Nature of the Case

Joshua Robert Burns appeals from the district court's order denying his motion to suppress and asserts that the district court erred where the totality of the circumstances known to the officer at the time he searched the luggage he had previously removed from the vehicle was insufficient to justify a community caretaking exception to the warrant requirement. The evidence was thus obtained in violation of his right to be free from unreasonable searches and seizures, protected by the Fourth Amendment to the United States Constitution and Article I § 17 of the Idaho Constitution. Mr. Burns asserts that the district court abused its discretion by imposing an excessive sentence of twelve years, with three years fixed after his conditional plea of guilty to one count of felony DUI and one count of trafficking in methamphetamine.

Statement of the Facts and Course of Proceedings

At approximately 1:30 in the afternoon on April 4, 2014, Officer Craig Durrell responded to a report that a vehicle was parked in a private driveway with the engine running. (12/11/14 Tr., p.11, L.20 – p.12, L.24.) Officer Durrell approached the sweaty driver who was slumped over the steering wheel and appeared to be unconscious. (12/11/14 Tr., p.13, Ls.6-14.) Officer Durrell got the man to unlock the door and, while waiting for the paramedics to respond, the officer obtained the man's identification and confirmed that the driver was Joshua Burns. (12/11/14 Tr., p.13, L.15 – p.14, L.25.) Officer Durrell asked Mr. Burns about alcohol or drug use as he went in and out of consciousness, but most of the questions were unanswered. (12/11/14 Tr., p.14, L.5 – p.15, L.16.) Mr. Burns did say he was taking Seroquel and told the officer he was not

overdosing on medications. (12/11/14 Tr., p.15, Ls.7-14.) Officer Durrell removed a black piece of luggage from the passenger side floorboard and a large toiletry bag from the back seat and then did a scan of the rest of the car to make sure there were not any weapons that Mr. Burns might be able to access.[1] (12/11/14 Tr., p.15, L.23 – p.16, L.17.) Officer Durrell placed these two items of luggage on the trunk of Mr. Burns' car.[2] (12/11/14 Tr., p.22, Ls.9-20, p.36, Ls.7-12.) Officer Durrell testified that while Mr. Burns was seated in the driver's side of the car, he was not moving much but would wake up and speak to the officer briefly before passing back out, slumped over in the car. (12/11/14 Tr., p.21, L.20 – p.22, L.1.) He did not make any furtive movements or say or do anything that led Officer Durrell to believe he was a threat. (12/11/14 Tr., p.22, Ls.2-8.) Five to ten minutes after Officer Durrell moved the luggage, the paramedics arrived. (12/11/14 Tr., p.22, Ls.21-25.)

Once the paramedics arrived, law enforcement backed away from the car and let the paramedics take over. (12/11/14 Tr., p.23, Ls.1-4.) Officer Durrell watched the paramedics evaluate Mr. Burns from a distance, but he could not hear any conversations between the paramedics and Mr. Burns. (12/11/14 Tr., p.23, Ls.7-12.) At one point, the first responders "started searching for any medications or prescriptions that he might have had with him that he could have overdosed on." (12/11/14 Tr., p.16,

[1] Defense counsel pointed out on cross examination that the officer removed a bag from the passenger floor and a bag from the backseat of the car, but failed to search Mr. Burns' person for weapons. (12/11/14 Tr., p.20, L.21 - p.21, L.19.) The officer admitted this was an error on his part. (12/11/14 Tr., p.20, L.21 – p.21, L.3.)

[2] Despite this testimony, State's Exhibit 3 at the suppression hearing is a photograph of three items—a toiletry bag and two small locking hard cases. (State's Exhibit 3.)

L.18 – p.17, L.2.) Although he was initially not involved in the discussion about the possibility of overdose between the paramedics and the fire personnel on scene, Officer Durrell ended up going straight to the luggage and searching it while a paramedic or fire EMT watched. (12/11/14 Tr., p.23, L.14 – p.24, L.20.)

When Officer Durrell search the luggage he had initially gathered from the vehicle, he found several prescription bottles as well as methamphetamine, cocaine, and assorted drug paraphernalia. (12/11/14 Tr., p.17, L.21 – p.19, L.4.) Mr. Burns was transported to the hospital. (12/11/14 Tr., p.30, Ls.12-20.) While there, law enforcement obtained Mr. Burns' consent to draw his blood. (12/11/14 Tr., p.28, L.1 – p.29, L.11, p.33, Ls.3-8.) Analysis of Mr. Burns' blood revealed positive results for methamphetamine and a metabolite of cocaine. (State's Exhibit 2, p.15; R., p.59.) The controlled substances taken from Mr. Burns' luggage consisted of an ounce of methamphetamine and an unspecified quantity of cocaine. (12/11/14 Tr., p.39, Ls.9-14; R., p.59.) Mr. Burns had two prior DUI convictions within the last ten years. (Presentence Investigation Report (*hereinafter*, PSI)[3], pp.3-4.) Mr. Burns was charged by Information with felony DUI, trafficking in methamphetamine, possession of a controlled substance with intent to deliver, possession of drug paraphernalia, and driving without privileges. (R., pp.58-60.)

Mr. Burns filed a motion to dismiss and/or a motion to suppress evidence and a memorandum in support. (R., pp.77-84.) Mr. Burns sought suppression of all evidence obtained as a result of the warrantless search of his vehicle and the results of the blood

[3] References to the "PSI" shall include the entire electronic file, including all attachments such as letters in support and all evaluations.

draw at the hospital. (R., pp.77-78.) Mr. Burns sought suppression of the controlled substances found in his luggage after the warrantless search of his luggage. (R., pp.80-84.) Mr. Burns sought to suppress the evidence obtained as the result of the blood draw, asserting that there was no warrant and he was under duress, disoriented, and incapable of giving knowing, intelligent, or voluntary consent for the blood draw. (R., pp.81-84.) A hearing was held on Mr. Burns' motion to suppress. (12/11/14 Tr.)

After the hearing, the district court denied Mr. Burns' motion to suppress finding that the search for medications in the two bags that were located within the wingspan of the defendant were part of the community caretaking function, and the intrusion was lawful to retrieve medications for the paramedics in order to find a cause for Mr. Burns' medical distress. (12/11/14 Tr., p.63, L.1 – p.64, L.8.) The district court also found that Mr. Burns gave knowing, intelligent, and voluntary consent to the blood draw. (12/11/14 Tr., p.63, Ls.1-6.)

Mr. Burns entered a conditional guilty plea to Counts I and II, preserving his right to appeal the district court's decision at the suppression hearing. (12/11/14 Tr., p.65, Ls.17-23, p.75, L.4 – p.76, L.8.) In exchange for the guilty plea to Counts I and II, the State agreed to dismiss the remaining charges. (12/11/14 Tr., p.65, Ls.17-23.)

At sentencing, the prosecutor asked the district court to sentence Mr. Burns to ten years, with three years fixed, on the DUI, and to fifteen years, with three years fixed, on the trafficking charge. (3/5/15 Tr., p.12, L.21 – p.13, L.10.) Mr. Burns' counsel asked the district court to sentence Mr. Burns to seven years, with three years fixed, on each count, to be served concurrently. (3/5/15 Tr., p.20, Ls.2-9.) The district court sentenced Mr. Burns to a unified sentence of twelve years, with three years fixed.

(3/5/15 Tr., p.22, L.19 – p.23, L.6; R., pp.153-157.) A Judgment of Conviction was entered and Mr. Burns filed a timely notice of appeal. (R., pp.153-157, 162-167.)

Mr. Burns filed a Rule 35 motion asking the district court to reconsider the sentence it imposed. (R., pp.168-169.) The district court issued a written order denying Mr. Burns' I.C.R. 35 motion without a hearing.[4] (R., pp.173-176.)

[4] On appeal, Mr. Burns does not assert that the district court erred in denying his Rule 35 motion as he did not include new or additional information in support of the motion. *See State v. Huffman,* 144 Idaho 201, 203 (2007) (holding "[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information.")

ISSUES

1. Did the district court err when it denied Mr. Burns' motion to suppress?

2. Did the district court abuse its discretion by imposing an excessive sentence in light of the mitigating factors that exist in this case?

ARGUMENT

I.

The District Court Erred When It Denied Mr. Burns' Motion To Suppress

A. Introduction

Mr. Burns asserts that Officer Durrell exceeded the community caretaking role when he searched three items of luggage the officer had retrieved from Mr. Burns' vehicle. As such, Mr. Burns' right to be free from unreasonable searches and seizures, protected by the Fourth Amendment to the United States Constitution, was violated. Therefore, the district court erred in denying Mr. Burns' motion to suppress.

B. Relevant Jurisprudence And Standards Of Review

In reviewing an order denying a motion to suppress evidence, Idaho appellate Courts apply a bifurcated standard of review: the Court will accept the trial court's findings of fact, unless they are clearly erroneous, but the Court will freely review the trial court's application of constitutional principles to the facts found. *State v. Purdum,* 147 Idaho 206, 207 (2009).

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV; IDAHO CONST. Art. I, § 17. The United States Supreme Court has held that when evidence is obtained in violation of the Fourth Amendment, the judicially developed exclusionary rule usually precludes its use in a criminal proceeding against the victim of the illegal search and seizure. *Illinois v. Krull*, 480 U.S. 340, 347 (1987).

A unanimous United States Supreme Court has held that warrantless searches are *per se* unreasonable. *Mincey v. Arizona*, 437 U.S. 385, 390 (1978). Therefore, a warrantless search is presumed to violate the Fourth Amendment. The State can only overcome this presumption by demonstrating that a warrantless search either fell within a well-recognized exception to the warrant requirement or was otherwise reasonable under the circumstances. *Coolidge v. New Hampshire,* 403 U.S. 443, 454-455 (1971); *State v. Weaver*, 127 Idaho 288, 290 (1995); *see also State v. Holton*, 132 Idaho 501, 503-04 (1999) (holding the same standard applies to Art. I, § 17 of the Idaho Constitution).

The community caretaking function which arises from the duty of police officers to help citizens in need of assistance. *State v. Page*, 140 Idaho 841, 844 (2004). In order to justify the detention of a citizen under the community caretaking exception, the officer must have a genuine and warranted concern rather than simply the officer's curiosity, an unsubstantiated suspicion of criminal activity, or an unwarranted concern that help might be needed. *Page*, 140 Idaho at 844; *State v. Maddox*, 137 Idaho 821, 824 (Ct. App. 2002).

In *Maddox*, the Idaho Court of Appeals explained:

> In analyzing claims that community caretaking justified a detention, Idaho courts apply a totality of the circumstances test. "[T]he constitutional standard is whether the intrusive action of the police was reasonable in view of all the surrounding circumstances." The reasonableness of an officer's action in pursuit of community caretaking is to be "[t]ested upon practical considerations of everyday life on which reasonable persons act...." There must be a sufficient public interest furthered by the detention to outweigh the degree and nature of the intrusion upon the privacy of the detained citizen.

Maddox, 137 Idaho at 824-25 (internal citations omitted).

Further, "[t]he reasonableness of an officer's action in pursuit of community caretaking is to be 'tested upon practical considerations of everyday life on which reasonable persons act.'" *Id*. at 824 (quoting *Matter of Clayton*, 113 Idaho 817, 818 (1988)). The *Maddox* Court noted that community caretaking could not be invoked to justify the detention of a citizen that is prompted merely by an officer's curiosity, a subjective but unsubstantiated suspicion of criminal activity, or even an unwarranted concern that help might be needed. *Maddox*, 137 Idaho at 824-25; *see also State v. Fry,* 122 Idaho 100, 104 (Ct. App. 1991) (holding that the community caretaking doctrine did not validate the detention of occupants of a vehicle that had moved forward a few feet, then backward, then forward again in a parking space of a parking lot and then jerked to a stop, where the officers did not perceive a medical emergency or other exigency but harbored subjective suspicions that the driver was connected with recent burglaries); *State v*. *Wixom,* 130 Idaho 752, 754 (1997) (holding that the community caretaking doctrine did not validate the stop of a motorist passing by an accident scene long after the accident so the officer could inquire whether the occupants had any information about the accident); *State v. Osborne,* 121 Idaho 520, 526 (Ct. App. 1991) (holding that the community caretaking doctrine did not validate the detention of an individual standing by a parked vehicle at 2:15 a.m. approximately 300 feet away from a lumber yard where, earlier in the evening, police had received a report of someone shooting out lights); *State v. Schmidt,* 137 Idaho 301 (2002) (holding that the community caretaking doctrine did not validate the detention of individuals sitting in a car lawfully parked on an unimproved pullout after dark in the winter based on the officers'

subjective belief, unsupported by any evidence, that the vehicle might have run off the road).

C. The District Court Erred In Denying Mr. Burns' Motion To Suppress Where The Search Occurred After The Officer's Role As Community Caretaker Had Ended

Even if Officer Durrell harbored a subjective belief that Mr. Burns was still in need of immediate assistance, his belief was not reasonable in view of all of the surrounding circumstances. *See Schmidt*, 137 Idaho at 304. Mr. Burns appeared to be having medical problems. Initially, Officer Durrell's services were necessary for community caretaking. However, once medical personnel arrived and began their work in assessing Mr. Burns, Officer Durrell had stepped back and was no longer involved in the scene. (12/11/14 Tr., p.23, Ls.2-13.) At that point, Officer Durrell and other law enforcement had performed their duties as community caretakers, the paramedics were on scene, and there was no indication that further law enforcement assistance was needed. Officer Durrell only became re-involved when, of his own volition, he chose to lead the search of the luggage. (12/11/14 Tr., p.23, L.14 – p.24, L.20.) Notably, Officer Durrell testified that once the paramedics arrived, law enforcement backed off and he did not recall being asked to search for prescription drugs, yet he was the only person going through the bags. (12/11/14 Tr., p.23, L.1 – p.24, L.20.) At that point, community caretaking had ceased and there was no further need for Officer Durrell to be present, nor was there a reason for him to dig around in Mr. Burns' luggage. Thus his re-insertion into the scene to provide an unsolicited search of Mr. Burns' luggage was unreasonable and unlawful.

An objective assessment of the totality of the circumstances with which Officer Durrell was confronted at the time of the search did not justify a search of the luggage to further a community caretaking purpose. The district court erred in finding that Officer Durrell was still engaging in his community caretaking function when he searched Mr. Burns' luggage. (12/11/14 Tr., p.60, L.21 – p.61, L.2.) The district court, in evaluating the totality of the circumstances, found that Officer Durrell did not believe he was looking for illegal substances, despite the fact that Mr. Burns had told an EMT that he had used methamphetamine three days earlier. (12/11/14 Tr., p.60, Ls.1-20.) The district court held, "[t]he community caretaking function is a function for which is excluded from the warrant requirement. *U.S. v. Johnson*, 410 F.3d 137 (2005), takes this outside of the issues of needing a warrant, so it's not just an exception from the warrant. It's actually excluded from the warrant requirement. In that you do not need probable cause to search the vehicle if it's to ensure the safety and the welfare for the citizenry." (12/11/14 Tr., p.58, Ls.16-23.) However, the district court's statement of the controlling authority was erroneous. The question is whether the intrusive action of the police was reasonable in view of *all the surrounding circumstances*. The reasonableness of an officer's action in pursuit of community caretaking is to be "[t]ested upon practical considerations of everyday life on which reasonable persons act...." *Clayton*, 113 at 818. Thus, there must be a sufficient public interest furthered by the detention to outweigh the degree and nature of the intrusion upon the privacy of the detained citizen–an officer could not simply search a vehicle without a community caretaking justification for the specific search. Simply because the officer is present at a

vehicle for community caretaking reasons does automatically give rise to probable cause to search the entire vehicle.

Officer Durrell's acts in searching the luggage was not justified by a community caretaking function because there was a substantial break in time when, upon the arrival of medical first responders, he stepped away from the scene, and, for some period of time was not privy to the discussions between the paramedics and EMT personnel as to what was causing the medical condition. (12/11/14 Tr., p.23, Ls.1-21.) Thus, his subsequent, unrequested re-insertion into the scene solely to search the luggage he had previously pulled from the vehicle on the pretense of helping emergency medical personnel determine why Mr. Burns was incoherent was not objectively reasonable and was not justified by a community caretaking function.

D. The District Court Erred In Denying Mr. Burns' Motion To Suppress

For the reasons stated above, Mr. Burns asserts that the search of the luggage found in his vehicle was unlawful and, thus, violated his Fourth Amendment and Article I § 17 right to be free from unreasonable searches and seizures. Mr. Burns asserts that the discovery of the evidence used against him was the product of an unlawful search and should have been suppressed as "fruit of the poisonous tree." *See Wong Sun v. United States*, 371 U.S. 471, 478-488 (1963). Therefore, Mr. Burns asserts that the district court abused its discretion by denying his motion to suppress.

II.

The District Court Abused Its Discretion When It Sentenced Mr. Burns To A Unified Sentence Of Twelve Years, With Three Years Fixed, Following His Conviction For Trafficking In Methamphetamine And Felony DUI

Mr. Burns asserts that, given any view of the facts, his unified sentence of twelve years, with three years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, "'[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.'" *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Burns does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Burns must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id*. The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id*.

In light of Mr. Burns' rehabilitative potential, the district court abused its discretion in sentencing him excessively. The district court failed to consider the fact that, with programming, Mr. Burns could likely be successful in the community. Notably, Mr. Burns went for 31 years without anything more than a traffic violation, but, later in

his life, his mental health issues became too much for him to handle. (PSI, p.10.) With treatment and support, Mr. Burns could be rehabilitated. (PSI, p.52.)

One mitigating fact the district court should have more fully considered was the fact that Mr. Burns has a very supportive mother and father. (PSI, pp.3-5, 13, 30.) Mrs. Burns testified at her son's sentencing hearing that he suffers from bipolar disorder and needs treatment for that condition. (3/5/15 Tr., p.3, L.14 – p.7, L.2.) She also testified that her son is a "generous, goal-oriented, and hardworking and honest young man." (3/5/15 Tr., p.5, Ls.24-25.) The fact that Mr. Burns has strong support from family members should have received the attention of the district court. *See State v. Shideler*, 103 Idaho 593, 594-595 (1982) (reducing sentence of defendant who had the support of his family and employer in his rehabilitation efforts).

Furthermore, the Idaho Supreme Court has "recognized that the first offender should be accorded more lenient treatment than the habitual criminal." *State v. Hoskins*, 131 Idaho 670, 673 (Ct. App. 1998) (quoting *State v. Owen*, 73 Idaho 394, 402 (1953), *overruled on other grounds by State v. Shepherd*, 94 Idaho 227 (1971)); *see also State v. Nice*, 103 Idaho 89, 91 (1982). Prior to these charges, Mr. Burns had never been convicted of a felony crime. (PSI, pp.5-6, 10.) Mr. Burns had lived a law-abiding life until 2012, when he got divorced and began drinking alcohol. (PSI, p.48.) After a suicide attempt, he was placed on medications for his mental health conditions. (PSI, p.48.)

Mr. Burns suffers from several mental health conditions—bipolar, depression, and anxiety. (PSI, pp.9-13, 17, 46-47.) The Idaho Supreme Court has recognized that

Idaho Code § 19-2523 requires the trial court to consider a defendant's mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999).

Although Mr. Burns had a substantial period of sobriety, he began abusing drugs and alcohol as a means to cope with his unmedicated mental health symptoms.[5] (PSI, p.30.) The Idaho Supreme Court has held that substance abuse should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982). In *Nice*, the Idaho Supreme Court reduced a sentence based on Nice's lack of prior record and the fact that "the trial court did not give proper consideration of the defendant's alcoholic problem, the part it played in causing defendant to commit the crime and the suggested alternatives for treating the problem." *Id.* at 91. Additionally, the Idaho Supreme Court has ruled that ingestion of drugs and alcohol resulting in impaired capacity to appreciate criminality of conduct, could be a mitigating circumstance. *State v. Osborn*, 102 Idaho 405, 414 (1981). Mr. Burns did not start using methamphetamine until age 32. (PSI, p.48.) Mr. Burns did drink heavily after his 2012 divorce, but abstained from alcohol after his second DUI in September 2013. (PSI, p.48.) However, Mr. Burns wants to remain abstinent from controlled substances. (PSI, p.24.)

Based upon the above mitigating factors, Mr. Burns asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his family support, his mental health conditions, and his status as a first time felon, it would have imposed a less severe sentence.

CONCLUSION

For the reasons set forth herein, Mr. Burns respectfully requests that this Court vacate the district court's judgment of conviction and reverse the order which denied his motion to suppress. Alternatively, he respectfully requests that this Court reduce his sentence or remand this matter for a new sentencing hearing.

DATED this 5th day of April, 2016.

_____/s/_____
SALLY J. COOLEY
Deputy State Appellate Public Defender

[5] Mr. Burns had stopped taking his bipolar medication as it gave him suicidal thoughts. (PSI, p.30.)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of April, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JOSHUA ROBERT BURNS
INMATE #114228
ISCC
PO BOX 70010
BOISE ID 83707

LYNN G NORTON
DISTRICT COURT JUDGE
E-MAILED BRIEF

JOHN T BUJAK
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720-0010
Hand delivered to Attorney General's mailbox at Supreme Court.

_____/s/_____
EVAN A. SMITH
Administrative Assistant

SJC/eas